

United States District Court District of Massachusetts

CONNECTU LLC,
Plaintiff,

V.

CIVIL ACTION NO. 2004-11923-DPW

MARK ZUCKERBERG,
EDUARDO SAVERIN,
DUSTIN MOSKOVITZ,
ANDREW MCCOLLUM,
CHRISTOPHER HUGHES,
THEFACEBOOK, INC.,
Defendants.

MARK ZUCKERBERG,
THEFACEBOOK, INC.,
Plaintiff-in-Counterclaim,

V.

CONNECTU LLC,
Defendant-in-Counterclaim,
CAMERON WINKLEVOSS,
TYLER WINKLEVOSS,
DIVYA NARENDRA,
Additional Defendants-in-Counterclaim.

ORDER

COLLINGS, U.S.M.J.

Having reviewed the parties' most recent filings following the October 25, 2006 evidentiary hearing, it has become clear that the defendants have misperceived the Court's directions respecting briefing. The plaintiff got it right. The Court wanted *all* legal issues respecting Narendra's membership or non-membership in the LLC on September 2, 2004 briefed. While the Court called counsel's attention to *specific* issues which should be included in the briefs, the Court was not limiting the briefs to just those specific issues.

Accordingly, the defendants are granted leave to file and serve further briefs *on or before the close of business on Friday, January 5, 2007* which deal with all the legal issues concerning how it is determined whether or not Narendra was a member of the LLC on September 2, 2004. The Court is not requesting briefs on the facts, just the law to be applied to whatever facts the Court finds.

For purposes of the briefs, counsel should assume that the provisions of ConnectU LLC's later executed Operating Agreement are not determinative on the question of diversity and that only the facts as they actually existed on September 2, 2004 are relevant in deciding whether Narendra was a member

of the limited liability company on the date that the complaint was filed.¹ Assume further that Delaware law is to be applied to that September 2nd snapshot of facts in order to determine the membership issue. For example, what is the law of Delaware, statutory and case law, that is applicable in resolving the membership issue and what are the standards to be applied? What factors may the Court properly consider?

These examples are not intended to limit the briefing; they are only examples of the questions which should be briefed. **So there is no further misunderstanding, all legal issues bearing on Narendra's membership or non-membership in the LLC as of September 2, 2004 are to be briefed.**

The plaintiff may file and serve a brief reply memorandum directed only to the points raised in the defendants' further briefs *on or before the close of business on Thursday, January 11, 2007.*

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

December 21, 2006.

¹

The reason for instructing counsel to make this assumption is that that issue has been fully briefed by the parties.